



REPUBLICA DEL ECUADOR



Ministerio
de Relaciones Exteriores,
Comercio e Integración

INFORME BLANCO SOBRE LA DEMANDA DEL ECUADOR CONTRA COLOMBIA

31 de marzo de 2008

English version

WHITE PAPER ON ECUADOR'S SUIT AGAINST COLOMBIA

On 31 March 2008, Ecuador filed a lawsuit against Colombia in the International Court of Justice, in The Hague, to bring an end to Colombia's aerial spraying of highly-toxic chemical herbicides along the Ecuador-Colombia border, and the serious damage that this practice has caused and continues to cause inside Ecuadorian territory to the health and well-being of the local population, including indigenous communities which have been displaced as a result of the chemical spraying.

For more than seven years, since Colombia first began aerial spraying in the border region, Ecuador has protested this practice and insisted that Colombia terminate it. Based on scientific and medical evidence that Colombia's spraying has been harmful to the human population in Ecuador, as well as to livestock, crops and the local ecosystem, Ecuador has demanded that Colombia refrain from further aerial spraying within 10 kilometers of the border. Colombia has systematically rejected all of Ecuador's entreaties during these past seven years, and categorically refused to stop spraying.

In 2007, the governments of Ecuador and Colombia each appointed a national Scientific and Technical Commission to evaluate the effects of this practice, and to attempt to arrive at a solution to the problem. In Ecuador's case, the national Scientific and Technical Commission conducted a comprehensive scientific study and produced a voluminous report documenting the deleterious effects of Colombia's aerial spraying on human health in Ecuadorian border communities, as well as the killing of livestock and the destruction of subsistence crops. Nevertheless, after several rounds of meetings the two Commissions were unable to reach agreement on the effects of the spraying or the actions that should be taken, and the discussions

were terminated. In July 2007, Ecuador formally notified Colombia that diplomatic efforts to resolve the dispute had been exhausted, without success, and that Ecuador would avail itself of other avenues for the peaceful resolution of disputes in accordance with international law. Colombia did not respond to this notification.

In January and February of this year, Ecuador made another, final attempt to resolve the dispute diplomatically, at the level of the Foreign Ministers of both States, but Colombia again refused to terminate aerial spraying along the Ecuador-Colombia border, and specifically refused to sign a bilateral agreement with Ecuador that would have committed Colombia not to spray within 10 kilometers of the border. Ecuador again notified Colombia that diplomatic efforts had been exhausted, and that it would resort to other avenues for achieving the peaceful resolution of the dispute. Again, Colombia did not respond to Ecuador's notification.

Having no other recourse, and after seven years of fruitless and frustrating diplomatic efforts, Ecuador filed a lawsuit in the International Court of Justice. The lawsuit seeks three remedies: (1) a declaration by the Court that Colombia has violated Ecuador's sovereignty and territorial integrity, in contravention of international law, by its practice of aerial spraying in a manner that has caused harm to Ecuador, its population and its environment; (2) an order that Colombia refrain from further aerial spraying; and (3) an order that Colombia pay reparations to Ecuador for the harm caused by the illegal spraying.

Ecuador's lawsuit against Colombia is unrelated to the separate dispute between the two States, emanating from Colombia's armed attack inside Ecuadorian territory on 1 March 2008. In that case, Ecuador urgently brought the matter to the attention of the Organization of American States as well as the Heads of State of the Rio Group. Both the Permanent Council of

the OAS (on 17 March) and the Heads of State of the Rio Group (on 8 March) issued Resolutions condemning Colombia for its use of force and violation of Ecuador's sovereignty in contravention of Articles 19 and 21 of the OAS Charter. In each case, the Resolutions included a formal apology by Colombia and a commitment by Colombia not to send its military or police forces into Ecuador, in violation of Ecuadorian sovereignty, again.

The close proximity in time between the present lawsuit and the Resolutions of the OAS and the Heads of State is coincidental. It takes many months to assemble a legal team and to prepare a lawsuit, and Ecuador began this process in July 2007, after concluding and so notifying Colombia that the dispute could not be resolved by diplomatic means. Ecuador's legal team began drafting the lawsuit in November 2007, more than three months before the Colombian armed attack of 1 March 2008.

Ecuador has appointed Mr. Diego Cordovez, former Assistant Secretary General of the United Nations and former Foreign Minister of Ecuador, as its Agent in the legal proceedings. Ecuador will be represented before the Court by an eminent team of international lawyers, including: Professor Pierre-Marie Dupuy, of the European International University in Florence; Professor Philippe Sands Q.C., of University College London; Professor Alan Boyle of the University of Edinburgh; Mr. Paul Reichler, Partner in the firm of Foley Hoag LLP in Washington; and Professor Iñigo Salvador, of the Pontifical Catholic University in Quito.

The jurisdiction of the Court is based on Article XXXI of the American Treaty for the Peaceful Settlement of Disputes, also known as the Pact of Bogotá, to which both Ecuador and Colombia are parties. Article XXXI vests the International Court of Justice with jurisdiction over any dispute between two or more parties that involves a question of international law. In

December 2007, the Court ruled that Article XXXI vested it with jurisdiction over a legal dispute between Nicaragua and Colombia.

It is with regret that Ecuador has felt the need to institute legal proceedings against a neighboring State. But, after seven years of failed diplomatic efforts and no prospects for future success, Ecuador concluded that it had only one option available to defend the integrity of its frontier with Colombia, to prevent further harm to the health and well-being of its citizens in the border area, to stop the killing of livestock and subsistence crops on which these marginal communities depend, and to protect the rich biological diversity of its natural environment. That option, which is consistent with Ecuador's wholehearted and historic commitment to resolve all international disputes peacefully and in accordance with international law, is to bring the matter to the international community's highest and most distinguished legal authority, the International Court of Justice. Ecuador commits itself to accept the decision of the Court, whatever it may be.

Below is further information about the case.

In 2000, the spraying of toxic herbicides became an integral part of Plan Colombia -- Colombia's anti-narcotics and anti-insurgency program. Since that time, the use of aerial fumigation has increased and has been systematically applied to regions directly adjacent to the border with Ecuador, with spraying near or over Ecuador itself.

Despite repeated requests from Ecuador, Colombia has refused to disclose the combination or concentration of chemicals employed in aerial spraying that has affected Ecuadorian territory. What is known is that the primary "active" ingredient in the mixture is glyphosate (N-Phosphonomethyl), an herbicide commonly used precisely because it is effective in non-selectively killing virtually every type of plant. Glyphosate is frequently combined with

other chemicals known as surfactants in order to increase the toxicity of the herbicide upon contact with the plants. These surfactants can often be more toxic than the herbicide with which they are mixed. Colombia has reportedly combined glyphosate with polyethoxylated tallowamine ("POEA"), a chemical found to cause eye burns, skin redness and blistering, nausea, and diarrhea. In addition, reports indicate that Colombia may be using another powerful and highly toxic surfactant referred to as Cosmoflux 411(f).

However, the true contents and concentration levels of the plant killing mixture Colombia has used over time remains undisclosed. Its harmful effect on plants of all species, including subsistence crops, is well known and documented. But its effects on humans and animals has never been subjected to proper evaluations for safety. While Colombia may be willing to assume the risks of this large scale experiment regarding the health of its own people, it is a clear violation of international law for Colombia to forcibly impose them on the people of Ecuador in Ecuadorian territory.

The harm suffered by the people, plants, and animals of Ecuador has been apparent from the onset of Colombia's aerial spraying program, though the full present scope and long term consequences of these harms remain unknown. The population residing in the Ecuadorian border provinces of Esmeraldas, Carchi and Sucumbíos, affected by the sprayed toxins, is predominantly poor, relying on subsistence farming as the sole means of income. In addition, these provinces are home to communities of indigenous peoples, including the Awá, who are deeply dependent on their natural environment. The chemical composition that has been sprayed was specifically designed to efficiently kill all plants. As such, the spray that has entered Ecuador has efficiently and indiscriminately decimated the flora that it reaches. Thousands of acres of the crops upon which these Ecuadorians rely have been devastated. The crops destroyed

provided both food for their families' consumption and products for economic income, including yucca, plantain, cocoa, rice, corn, coffee and various fruits.

Beyond the immediate consequences caused by the destruction of these crops, is the immeasurable damage that has been caused to the area's complex eco-system. Ecuador has the world's highest biological diversity per area unit, meaning that, on average, there are more species per square kilometer in Ecuador than anywhere else in the world. As a result, Ecuador is committed to protecting its unique and irreplaceable concentration of biodiversity. Nearly one-quarter of the nation's land has been designated a national park or protected area. The risks of Colombia's aerial spraying to the delicate balance of these eco-systems is enormous. At the very least, the toxins in the mixture have imperiled the terrestrial and aquatic species endemic to these biologically rich areas.

The harm to the health and well-being of the Ecuadorians living in the border area has been devastating. Spraying has been carried out annually since 2000. Each spraying event can last up to several days, and repeated numerous times per day in the same area, with fumigation planes flying near, on, and even over the Ecuadorian border. Ecuadorian communities living in this area have witnessed groups of planes spraying white or grey clouds. Many community members, such as those living in San Francisco Dos or Las Salinas, have witnessed this cloud drifting toward their crops and homes and have smelled a "foul" odor; some, caught working in their fields without warning, have felt the drizzle of this mist on their skin. Immediately following the first spraying in the border area of the Colombia's Putumayo Province, the Ecuadorian community members living across the border suffered from skin lesions and rashes, burning eyes, nausea, aching bones, severe dizziness, respiratory complications, and even intestinal bleeding and death. These symptoms impacted more severely the weakest sections of

this already vulnerable population: children, the sick, and the elderly. The same maladies have been suffered repeatedly, year after year, community after community, along the Ecuadorian border with Colombia for the last seven years. Ecuador, as a nation, could not condone these forced afflictions on its people.

Accordingly, Ecuador has continually urged Colombia to stop conducting aerial fumigations near the border between the two States. In particular, Ecuador urged the creation of a 10 kilometer zone along the border where aerial spraying would be prohibited, in order to ensure that the herbicidal spray did not directly or indirectly enter Ecuadorian territory. Unfortunately, despite Ecuador's repeated efforts over more than seven years, Colombia's aerial spraying practices remain the same. At one time, in December 2005, Colombia actually agreed to refrain from conducting any further aerial spraying within 10 kilometers of the Ecuadorian border. However, Colombia's agreement was short-lived. By the time of the next annual spraying campaign, in December 2006, Colombia renounced its prior commitment and resumed aerial spraying within the 10 kilometer zone and right up to the border with Ecuador, just as it had done in the past. More recently, Colombia again demonstrated its unwillingness to reach any form of compromise. At a meeting of Ministers of Foreign Affairs, on 28 May 2007, Colombia's Minister of Foreign Affairs, Mr. Fernando Araújo Perdomo, stated that "Colombia is not in a position to make commitments with respect to the question of the fumigations; nor could it predict what decision it will take in the future in this respect." Colombia's entrenched position and its continued violation of international law and Ecuador's rights, has regrettably left Ecuador with little choice as to how to reach a peaceful and binding resolution of this ongoing problem. Litigation has become Ecuador's only option.

Ecuador is fully committed to the fight against cultivation and trafficking of illegal drugs. Ecuador itself has achieved remarkable success in its own fight against drugs. Due to its anti-narcotics efforts, it is the only Andean country where there is no significant cultivation of coca. Ecuador commits a large share of its national budget every year to the fight against trafficking in drugs, and is recognized internationally for the seriousness and accomplishments of its efforts. Ecuador collaborates with Colombia in fighting drug traffickers in the border area, and has captured and extradited back to Colombia prominent Colombian traffickers. The present lawsuit, if successful, will have no adverse impact on Colombia's own drug-fighting efforts. It has been well documented by respected and unbiased international observers and experts, including the International Crisis Group in its report of March 2008, that aerial spraying of coca plantations is both ineffective and counterproductive, and that it contributes to environmental devastation. Even Colombia now recognizes this. Its highest officials, including its President and Foreign Minister, have declared that, in a major policy change, Colombia will henceforth give priority to manual eradication of coca rather than aerial eradication. Yet, Colombia still refuses to agree to Ecuador's demand that it refrain from further aerial spraying within 10 kilometers of the border.

Accordingly, the order that Ecuador seeks from the Court would protect the integrity of its frontiers in accordance with international law, safeguard Ecuadorians living in the border area against further harm caused by Colombia's aerial spraying, and preserve the delicate and biologically diverse ecosystem of the region, all without diminishing Colombia's efforts to address the problem of widespread cultivation of coca and other illegal crops in its own territory. Ecuador trusts that the Court will sustain its claims.